Nos. 21-3503, 21-3544

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Suellen Klossner,

Plaintiff-Appellee and Cross-Appellant,

v.

IADU Table Mound, MHP, LLC and
Impact MHC Management, LLC

Defendants-Appellants and Cross-Appellees.

On Appeal from the United States District Court
for the Northern District of Iowa
No. 2:20-cv-01037-CJW
Hon. Charles J. Williams, U.S. District Judge

BRIEF OF MHACTION AND THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICI CURIAE* IN SUPPORT OF APPELLEE SUELLEN KLOSSNER SEEKING AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Amici are nonprofit organizations. They have no parent corporations, and no publicly held corporation owns any portion of any of them.

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IDENTITY AND INTEREST OF *AMICI CURIAE*

MHAction is a growing national movement of manufactured home community residents and homeowners who organize their neighbors, build campaigns to protect the affordability and quality of their communities, and fight to advance racial, economic, and gender justice. The movement is built on a core belief that everyone should have a healthy, vibrant community and a decent, affordable place to call home. MHAction works to hold corporate manufactured home community owners accountable, and advocates for policy reform to ensure these communities remain an affordable, secure housing option.

The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit civil rights organization formed in 1963 by the leaders of the American bar, at the request of President Kennedy, to secure and defend the civil rights of African Americans, other racial and ethnic minorities, and the poor. The Fair Housing and Community Development Project at the Lawyers' Committee works with communities across the nation, including those in rural and exurban areas, to combat, protest, litigate and remediate discriminatory housing

practices to promote greater opportunity for lower-income people of color.

Amici have a shared interest in ensuring that fair housing laws are interpreted and enforced to secure greater opportunity and equal housing choice for low-income people and people of color who disproportionately live in manufactured home parks like the ones owned and managed by the Appellants in this case, and who are more likely to rely on federally-subsidized Housing Choice Vouchers to help pay their rent. This case, addressing the circumstances under which a landlord must make a reasonable accommodation to a manufactured home park resident with a disability by accepting a tenant's Housing Choice Voucher, therefore has significant implications for the communities whose interests *amici* represent.

Because Appellants declined to provide their consent, MHAction and the Lawyers' Committee have concurrently filed a motion requesting leave to file this brief under Federal Rule of Appellate Procedure 29(a)(3).

In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), MHAction and the Lawyers' Committee state that no

party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting this brief; and no person, other than *amici*'s pro bono counsel, contributed to the cost of preparing or submitting this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case has significant implications for people with disabilities and other protected classes who disproportionately rely on vouchers, issued by state or local public housing authorities through the federal Housing Choice Voucher ("HCV") program, formerly known as "Section 8," to pay their rent. This is especially true for voucher holders living in manufactured home parks.

Defendants-appellants IADU Table Mound MHP, LLC and Impact MHC Management, LLC, and defendant RV Horizons, Inc.[1] (collectively, "Landlords") refused to accept an HCV from plaintiff-appellee Ms. Suellen Klossner to accommodate her disability. The HCV would have helped Ms. Klossner pay her "lot rent" for her manufactured home located in Landlords' manufactured home park, where Ms. Klossner is a long-time resident. Ms. Klossner needs to use an HCV to help pay her lot rent because her disability prevents her from being able to earn sufficient wages to pay her lot rent without assistance.

[1] Defendant RV Horizons, Inc. did not join the other appellants in the appeal.

The Landlords' position boils down to this: their right to implement a no-voucher policy is absolute, except where they themselves have chosen to make exceptions to that policy. There is no scenario, the Landlords argue, under which their refusal to accept a particular individual's HCV could constitute housing discrimination. They insist that even if accepting an HCV were a reasonable and necessary accommodation to Ms. Klossner's disability, doing so would "inevitably" impose an undue financial and administrative burden on them. The Landlords claim that Congress intended things to be this way, since Congress made the HCV program "voluntary."

Amici respectfully submit this brief to provide supplemental factual and legal context for why the Landlords' position is untenable.

First, there is nothing "inevitable" about the potential financial and administrative burdens associated with accepting HCVs. Decades of experiential data show that landlords have successfully overcome any perceived burdens associated with accepting HCVs, including in the more than 20 states that have passed source of income anti-discrimination laws that make HCV acceptance effectively mandatory. Instead of a burden, landlords often experience material benefits from

accepting HCVs. Courts have thus been appropriately skeptical of claims that accepting HCVs is categorically too burdensome.

Second, even if accepting HCVs imposes some small financial or administrative costs on landlords, the Court must still engage in a "balancing of the parties' needs" to determine whether those costs amount to an "undue burden." Here, the balance tilts decisively in Ms. Klossner's favor. Ms. Klossner would have her life turned upside down if forced to leave Table Mound, where she has resided for thirteen years. She owns her manufactured home, but not the lot it sits on. She cannot afford to move the manufactured home to a new lot where her HCV would be accepted. Accordingly, the stakes are clear: if the Landlords will not accommodate Ms. Klossner's disability by accepting an HCV to help pay her lot rent, she will lose the home she owns. This unique challenge faced by manufactured home owners like Ms. Klossner underscores why accepting HCVs is a uniquely necessary accommodation here.

Third, that the HCV program is voluntary does not give landlords an absolute defense to fair housing claims. Federal fair housing law requires landlords to provide accommodations they may not otherwise

be required to make under law – that is, the law may sometimes require a landlord to make an accommodation that would be voluntary under normal circumstances.

This Court should affirm the trial court's well-reasoned decision.

ARGUMENT

I. Participation in the HCV Program Does Not "Inevitably" Impose Undue Financial or Administrative Burdens on Landlords.

A. HCV Program Requirements for Landlords are Straightforward.

Congress created the HCV program for "the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing" by helping participating families afford units in the private rental market that would otherwise be out of reach. 42 U.S.C. § 1437f(a). The HCV program is regulated by the U.S. Department of Housing and Urban Development ("HUD") and administered by state and local public housing agencies ("PHAs"). 42 U.S.C. § 1437f(a)–(b). In broad strokes, the HCV program works as follows: HUD distributes federal funds to PHAs, which, in turn, issue vouchers to participating families who independently search for suitable units made available on the private rental market. *Id.* § 1437f(o). PHAs

then contract directly with private landlords to make partial or complete rent payments on behalf of participating families. *Id.* § 1437f(c), (o). The portion of rent paid by a PHA is deposited directly into the landlord's account each month, while the participating family pays the landlord the difference (if any) between the actual rent charged by the landlord and the amount paid by the PHA. *Id.* § 1437f(c)(3), (o)(2).

Landlords who rent to participating families need not fundamentally alter their operations. For instance, landlords may still apply standard screening criteria for prospective tenants, such as reasonable rental history criteria, just as they would with any other prospective renter. 24 C.F.R. § 982.307(a)(3). Landlords also may impose the same security deposit requirements, *id.* § 982.313; charge market-rate rents with no artificial caps, *id.* § 982.507; negotiate specific lease terms with a tenant, *id.* § 982.308; and terminate a tenancy for serious or repeated violations of the lease terms, *id.* § 982.310.

Landlords' principal obligation under the HCV program is "to provide decent, safe, and sanitary housing to a tenant at a reasonable

rent." *Housing Choice Vouchers Fact Sheet*, U.S. Dep't of Hous. & Urban Dev., https://tinyurl.com/2p8wyute (last visited Feb. 24, 2022). PHAs thus perform pre-rental inspections to ensure both that a unit meets housing quality standards ("HQS"), which consist largely of basic maintenance requirements like functioning smoke detectors, and that the rent requested is reasonable. 24 C.F.R. § 982.305.[2] HQS are often no more stringent than local housing codes that landlords must follow in any event. *See* 42 U.S.C. § 1437f(o)(8)(B) (providing that HQS may be "established … by local housing codes"). Landlords also enter into individual housing assistance payments ("HAP") contracts with PHAs that run for the same term as the lease. 24 C.F.R. § 982.451. Among other things, HAP contracts require landlords to maintain units at a level that meets HQS and to include a HUD-prescribed "tenancy addendum" in the lease. *Id.* §§ 982.308(f), 982.451.

[2] A determination that the rent requested is not reasonable does not mean that a landlord would be required to accept a reduced rent. The landlord would have the choice of reducing their rent in order to participate in the HCV program or seeking to rent to a tenant who is not a participant in the HCV program.

Landlords have even fewer responsibilities under the HCV program where, as here, the participating family owns a manufactured home but needs assistance paying lot rent. *See* 42 U.S.C. § 1437f(o)(12) (authorizing PHAs to provide rental assistance for manufactured home spaces). For example, while the manufactured home remains subject to HQS inspection, it is the participating family – not the landlord – who is "responsible for ensuring that the manufactured home is in compliance with the HQS." U.S. Dep't of Hous. & Urban Dev., Notice PIH 2017-18, at 12 (Sept. 7, 2017), https://tinyurl.com/2n3m7wjs. And it is the PHA – not the landlord – who "must take prompt and vigorous action" to ensure the participating family makes necessary repairs where HQS deficiencies exist.[3] U.S. Dep't of Hous. & Urban Dev., *The Housing Choice Voucher Program: Guidance on Manufactured Home Space Rental Assistance* 28 (Oct. 2017), https://tinyurl.com/2s3rj59c.

[3] The standard HAP contract published by HUD for manufactured home space rentals makes clear that the landlord "is not required to maintain or repair the family's manufactured home." U.S. Dep't of Hous. & Urban Dev., Form HUD-52642, at 9 (July 2019), https://tinyurl.com/yeywpr7p.

B. Experience Shows That Participation Is Not Burdensome and Can Even Benefit Landlords.

The HCV program has existed since the mid-1970s, providing decades of experiential data to assess the burdens (and benefits) of landlord participation. Today there are more than 5 million people living in more than 2 million units subsidized through the HCV program. *Assisted Housing: National and Local*, Office of Pol'y Dev. & Research, U.S. Dep't of Hous. & Urban Dev., https://tinyurl.com/yc7dh7by (last visited Feb. 24, 2022) (using Query Tool to show 2021 results for HCV program). Clearly, a vast number of landlords have been able to overcome any potential administrative burdens to successfully participate in the HCV program.

In addition, at least 23 states and more than one hundred localities have adopted source-of-income laws that prohibit landlords from implementing voucher-refusal policies. Kristin Hernandez, *Biden Wants to Offer More Housing Vouchers. Many Landlords Won't Accept Them*, Pew Charitable Trusts (May 12, 2021), https://tinyurl.com/2p88v7zs. The fact that private landlords continue to operate in all of these places makes plain that prohibitive financial and

administrative burdens are not "inevitable" for landlords who accept HCVs.

To the contrary, the available public evidence shows that participating in the HCV program can actually produce material benefits for landlords. Three such benefits are:

First, landlords can count on consistent monthly rent payments from PHAs, which are mailed or deposited directly each month without delay. These payments generally constitute a large percentage of the rent owed because the remaining portion paid by the participating family is capped by regulation. *See* 24 C.F.R. § 982.505. In addition, landlords are protected where a participating family's income decreases, because a PHA is permitted to pay a larger portion of the rent to landlords to ensure they receive full rental payments. *See id.*

Second, landlords gain access to a large tenant base, consisting of millions of families nationwide who would not otherwise be prospective tenants due to insufficient income or assets. Jung Hyun Choi & Laurie Goodman, *Housing Vouchers Have Helped Tenants and Landlords Weather the Pandemic*, Urban Inst. (Mar. 23, 2021), https://tinyurl.com/mszn6nh6.

Third, participating families are good tenants. Most landlords who participate in the HCV program have reported a positive experience renting to participating families. *Id.* ("Eighty percent of Hispanic landlords, 77 percent of Black landlords, and 69 percent of white landlords expressed their experience with voucher holders was positive."). Participating families have every incentive to maintain their units and pay rent on time because failing to do either could result in losing critical assistance through the HCV program. *See* Alison Bell et al., *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results*, Ctr. on Budget & Pol'y Priorities (Dec. 20, 2018), https://tinyurl.com/4e9cv7w9.

C. Courts Have Routinely Rejected Claims from Landlords That Participation in the HCV Program Is Burdensome.

Against this backdrop, it should come as no surprise that courts have been skeptical of claims from landlords that the HCV program categorically imposes significant financial and administrative burdens on them.

For example, in *Franklin Tower One, L.L.C. v. N.M.*, 725 A.2d 1104 (N.J. 1999), the New Jersey Supreme Court considered an

administrative burden defense made by a landlord who refused to accept a voucher from an existing tenant because "it did not want to become entangled with the 'bureaucracy' of the Section 8 program." *Id.* at 1107. The court squarely rejected the landlord's "contention that to require landlord participation in the Section 8 program is unfair because of the substantial burdens imposed by the program's regulatory requirements." *Id.* at 1113–14. The court found that "HQS[] and other program requirements [were] not overly burdensome." *Id.* at 1114. The court further reasoned that "[l]andlords in New Jersey are already subject to numerous regulations concerning the maintenance of their properties and relations with their tenants," *id.*, effectively minimizing any incremental burden associated with accepting vouchers.

Several other courts have reached similar conclusions in anti-discrimination cases brought against landlords who attempt to justify their refusal to accept vouchers by citing administrative burden. *See, e.g.*, *Montgomery Cnty. v. Glenmont Hills Assocs. Privacy World at Glenmont Metro Ctr.*, 936 A. 2d. 325, 332 (Md. 2007) (affirming ruling that landlord had failed to show that the "administrative burdens inherent in" the HCV program were "unduly burdensome"); *Comm'n on*

Human Rights & Opportunities v. Sullivan Assocs., 739 A.2d 238, 245 (Conn. 1999) (rejecting landlord objection to Section 8 lease terms as burdensome); *M.T. v. Kentwood Constr. Co.*, 651 A.2d 101, 103 (N.J. Super. Ct. App. 1994) (finding that landlord who had previously accepted vouchers from other tenants "had not presented any persuasive reasons why signing the [required Section 8] documents in plaintiff's case would cause it any undue hardship or burden").

These cases underscore the importance of critically evaluating – as the trial court did here – whether a landlord has marshaled sufficient factual evidence to support claims of administrative burden, or whether the landlord is relying instead on mere assertions.

D. Accepting Mere Assertions of Burden Would Render Landlords Unaccountable for Discriminating Against Voucher Holders Who Belong To Protected Classes.

Both experience and case law teach that mere invocation of red tape by landlords does not make it so. Moreover, were this Court to displace the judgment of the trial court and accept the vague and unsupported assertions of financial and administrative burden as an excuse for voucher refusal, without sufficient individualized proof to substantiate that burden, it would effectively render all landlords

unaccountable even where the excuse was a clear pretext for illegal discrimination.

The federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* ("FHA"), contemplates that plaintiffs may challenge facially neutral policies that have a disproportionately adverse effect on protected groups under a "disparate impact" theory. *See Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015); *Ellis v. City of Minneapolis*, 860 F.3d 1106, 1110–11 (8th Cir. 2017). The Supreme Court has stated that disparate impact liability is an important tool "to counteract unconscious prejudices and disguised animus" that may otherwise go unaddressed. *Inclusive Communities*, 576 U.S. at 540. This is especially true for voucher holders, a group of people comprised disproportionately of families of color and people with disabilities. In Iowa, 33% of HCV tenants are people of color, and 29% of HCV household members have disabilities.[4] By contrast, just 14.3% of Iowans

[4] *Assisted Housing: National and Local*, Office of Pol'y Dev. & Research, U.S. Dep't of Hous. & Urban Dev., https://tinyurl.com/mvsjzsht (last visited Mar. 5, 2022) (query for Iowa; Housing Choice Vouchers; "% with disability, among all persons in household"; "% minority").

are people of color,[5] and 11.7% of Iowans have disabilities.[6] The FHA must not be misconstrued to allow facially neutral policies, like blanket voucher refusal policies, to conceal illegal discrimination against these families based on their membership in a protected class.[7] Disparate impact liability ensures that landlords are held accountable where a no-voucher policy has an adverse effect on protected groups and does not have a legitimate justification in the specific circumstances at issue.[8]

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[5] *DP05 American Community Survey Demographic and Housing Estimates*, U.S. Census Bureau, https://tinyurl.com/5n8kunkr (last visited Mar. 5, 2022) (2019 American Community Survey 5-Year Estimates Data Profiles).

[6] *DP02 Selected Social Characteristics in the United States*, U.S. Census Bureau, tinyurl.com/2p8nxs9t (last visited Mar. 5, 2022) (2019 American Community Survey 5-Year Estimates Data Profiles).

[7] *See* Lawyers' Comm. for Better Hous., Inc., *Locked Out: Barriers to Choice for Housing Voucher Holders: Report on Section 8 Housing Choice Voucher Discrimination* 6, 8 (2002), https://tinyurl.com/2b4bss98. Some landlords told black testers with housing vouchers that an apartment was not available, but white testers with vouchers were told the same unit was available. *See id.* at 6.

[8] Multiple courts have held that no-voucher policies can be challenged under a disparate impact theory. *E.g.*, *Green v. Sunpointe Assocs.*, No. 96-cv-1542, 1997 WL 1526484, at *4 (W.D. Wash. May 12, 1997) (finding that class of voucher holders had made out prima facie case of disparate impact under FHA where landlord had withdrawn from HCV program, disproportionately affecting black voucher holders); *Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F. Supp. 148 (S.D.N.Y. 1989) (awarding injunctive relief to plaintiffs who had made

Likewise, the FHA's reasonable accommodation obligation can mitigate the adverse effects of such refusals on persons with disabilities on a case-by-case basis.

Allowing landlords to justify their actions by merely asserting that a burden theoretically could exist would provide landlords an absolute defense to FHA disparate impact claims – no matter how great the impact – where "no such blanket exemptions … exist in the text of the statute or the case law of the Supreme Court or Eighth Circuit." *See Crossroads Residents Organized for Stable & Secure ResiDencieS (CROSSRDS) v. MSP Crossroads Apartments LLC*, No. 16-cv-233, 2016 WL 3661146, at *10 (D. Minn. July 5, 2016); *see also Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 303 (2d Cir. 1998) (Calabresi, J., dissenting) (warning against immunizing landlords who choose not to accept HCVs from liability for discrimination "no matter how great the disparate impact of their actions may be"). Such an outcome would render the promise and protections of the FHA nugatory, leaving

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prima facie showing of disparate impact under FHA where landlord had withdrawn from HCV program, disproportionately affecting black and Hispanic voucher holders).

victims of discrimination with no recourse and subject to the whims of unaccountable landlords in the search for safe and affordable housing.

II. The District Court Properly Balanced the Parties' Needs, Particularly Given the Unique Relocation Burdens That Ms. Klossner, a Manufactured Home Resident, Faced.

The Eleventh Circuit explained in *Schaw v. Habitat for Humanity of Citrus County, Inc.*, 938 F.3d 1259, 1265 (11th Cir. 2019), that the analysis of what is necessary and reasonable for the person requesting accommodation, and what, by contrast, constitutes an undue burden for a landlord, is at bottom a "balancing of the parties' needs." *Id.* at 1265 (quoting *Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, 765 F.3d 1277, 1289 (11th Cir. 2014)). Courts must "weigh the respective costs and benefits of the accommodation to the parties." *Schaw* at 1265. The record in this case (Appellee's Br. at 42–57 (discussing and citing to evidence in record)), as well as collective experience with the HCV program in recent decades (described above), demonstrates that requiring the Landlords to accept Ms. Klossner's HCV would not impose an undue burden. By contrast, being forced to leave Table Mound would have a life-altering impact on Ms. Klossner. Her disabilities would be exacerbated, and she would be completely deprived of both her long-

time home and the money, time, and resources she invested in it. Though moving is universally a disruptive event, being forced to try to physically move a manufactured home is substantially more disruptive.

A. Moving a Manufactured Home Is Not Easy or Practical.

The Landlords assert that moving a manufactured home is "absolutely" possible, and that relocation is a feasible option for Ms. Klossner. Appellants' Br. at 20. This position does not reflect the reality of manufactured home ownership or the specific facts of this case.

While manufactured homes are also known as "mobile homes," that has proven to be a misnomer. Manufactured homes are, as the Supreme Court has recognized, "largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself." *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 523 (1992).

Indeed, over 95% of manufactured homeowners will never attempt to relocate, and for good reason. *Id.* ("[O]nly about 1 in every 100 mobile homes is ever moved." (citation omitted)); *accord* James Milton Brown, *Manufactured Housing: The Invalidity of the 'Mobility' Standard*, 19

Urban Lawyer 367, 379–80 (1987) ("[O]nly 1 to 3 percent of manufactured homes are moved after they have been delivered from the factory and permanently sited."). The cost of moving a home ranges from $5,000 to $10,000. *See* Nat'l Consumer Law Ctr., *Manufactured Housing Resource Guide: Protecting Fundamental Freedoms in Communities* 1 (2015), https://tinyurl.com/57ysukzv; R. Doc. 73 (Trial Tr. Vol. I) at 122:9-15 (expert testimony that a 1977 home like Ms. Klossner's would cost around $10,000 to move). This is a substantial amount of money for most Americans, let alone those living in manufactured homes, 75% of whom make less than $50,000 a year. Private Equity Stakeholder Project, *Private Equity Giants Converge on Manufactured Homes* 4 (2019), https://tinyurl.com/yc7msspr.

The median income of manufactured homeowners is $30,000. *Id.* By contrast, the median household income nationwide is over twice as much, $62,843. *DP03 Selected Economic Characteristics*, U.S. Census Bureau, https://tinyurl.com/4w3xs63r (last visited Feb. 23, 2022) (2019 American Community Survey 5-Year Estimates Data Profiles). For context, roughly half of all U.S. households could not handle an emergency expense of just $400. *See* Bd. of Governors of the Fed.

Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2016*, at 2 (May 2017), https://tinyurl.com/yckvucn2.

And even for owners who can afford to relocate their manufactured home, there is a substantial risk that the manufactured home will not survive the move. *See* Mike Baker & Daniel Wagner, *The Mobile-home Trap: How a Warren Buffett Empire Preys on The Poor*, Seattle Times (Apr. 2, 2015), https://tinyurl.com/s9k33rum. Manufactured homes are often attached to concrete foundations, and many are irreparably damaged during the relocation process. *See Private Equity Giants Converge on Manufactured Homes*, *supra*, at 1, 4.

Planning and zoning laws may add another barrier to relocation, making it difficult in some cases, if not impossible, to re-site a home to another property. *See Get the Facts on Zoning*, Manufactured Housing Institute, https://tinyurl.com/yckr5eu6 (last visited Mar. 7, 2022) (describing the "growing trend" of zoning laws that ban or restrict the placement and replacement of manufactured homes); *Private Equity Giants Converge on Manufactured Homes*, *supra*, at 8 (noting "there are limited [] sites to relocate" due to "[l]ocal zoning and regulatory constraints").

Here, Ms. Klossner's Trail-A-Rod, double-wide manufactured home was constructed in 1977. R. Doc. 3 (Pl.'s Compl.) ¶ 12. The age and condition of this nearly fifty-year-old manufactured home means that forcing Ms. Klossner to relocate would risk the structural integrity of her home. *Id.* ¶ 13. One of the principals of the Landlords' RV Horizons and Impact Communities, Frank Rolfe, has himself publicly conceded that "owning a manufactured housing park is 'like owning a Waffle House where the customers are chained to the booths,'" for precisely this reason. *Id.* ¶ 16 (quoting Karl Vick, *The Home of the Future*, Time (Mar. 23, 2017), https://time.com/4710619/the-home-of-the-future).

And the costs of moving are prohibitive for Ms. Klossner regardless. Ms. Klossner's income is limited to her governmental benefits. *Id.* ¶ 19. Someone like Ms. Klossner, who qualifies for a voucher and cannot work because of her disabilities is unlikely to be able to afford a $10,000 moving cost. Moreover, if Ms. Klossner were somehow able to save $10,000, she would then risk losing her SSI benefits, because of the $2,000 resource cap. *See Spotlight on Resources*

- *2021 Edition*, Soc. Sec. Admin., https://tinyurl.com/244hddc5 (last visited Feb. 23, 2022).

Nor would Ms. Klossner be likely to succeed if she tried to sell her home. *See* Baker & Wagner*, supra* ("[Mobile] homes [] are almost impossible to sell or refinance."); *see also* R. Doc. 3 (Compl.) ¶ 12. Even if she were, being forced to sell the home she has lived in for thirteen years itself weighs heavily in balance in favor of a reasonable accommodation.

B. The Landlords are Part of a Widespread Rise of Corporate Takeovers of Manufactured Home Parks, Raising Costs for Manufactured Homeowners and Depriving Them of Choice.

Over the last twenty years, an increasing number of manufactured home communities traditionally run by "mom-and-pop" businesses have been acquired by large multi-state corporations that typically increase lot fees to raise revenue. *See Private Equity Giants Converge on Manufactured Homes*, *supra*, at 4. Indeed, since 2016 alone, private equity firms have acquired over 150,000 manufactured home parks. *Id.*

In fact, Landlords' principals, Dave Reynolds and Frank Rolfe, co-founded "Mobile Home University," which instructs companies how to

make manufactured home community investments as profitable as possible.[9] The financial logic of these investments and the resulting power imbalance they create is crudely captured in Rolfe's own words, as stated at one of his Mobile Home University seminars from 2014 that was recorded and later broadcast on an HBO television program:

> [Y]ou know the customers are stuck there…they don't have any options, they can't afford to move the trailer. They don't have three grand, so the only way they can object to your rent raise is to walk off and leave the trailer, in which case it becomes abandoned property and you recycle if – put another person in it. So you really hold all the cards. So the question is what do you want to do? How high do you want to go?

Video of Frank Rolfe, *Mobile Homes: Last Week Tonight with John Oliver*, HBO (Apr. 2, 2019), *available at* https://tinyurl.com/2p9cnve6 (segment showing video of Rolfe begins at 10:52).

While the administrative burdens of participating in the HCV program could be onerous for small, family-owned manufactured home parks, it strains reason to believe this could be the case for large

[9] *About Us*, Mobile Home University, https://tinyurl.com/35b2kbk7 (last visited March 5, 2022); *Home*, Mobile Home University, https://tinyurl.com/ycksxafw (last visited March 5, 2022).

corporate manufactured home park owners, like Landlords here, adept at maximizing corporate profits.

The cost-benefit analysis that the District Court applied, and that this Court should affirm, squarely favors granting Ms. Klossner her requested accommodation.

III. Courts Are Not Categorically Barred from Requiring Acceptance of an HCV as a Reasonable and Necessary Accommodation.

Every request for an accommodation under the Fair Housing Act requires a case-by-case analysis of whether the requested accommodation (a) is reasonable and necessary to afford the plaintiff her equal opportunity to use and enjoy her dwelling, and (b) imposes an undue burden on the landlord, as discussed above.

The Landlords ask this Court, relying primarily on the Second Circuit's twenty-five-year-old decision in *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998), not to undertake a reasonable accommodation analysis at all, but rather to categorically bar all such accommodation requests. Appellants' Br. at 2, 31–33, 36, 46, 71–72. *Amici* will not repeat Ms. Klossner's thorough argument as to why this Court should not adopt the Second Circuit's position in

Salute, but should hold instead, as the Eleventh Circuit did in *Schaw*: "[N]ot in this Circuit." *Schaw*, 938 F.3d at 1270; Appellee's Br. at 29–37.

Rather, *amici* more narrowly address the Landlords' repeated refrain that a landlord can never be required to accept an HCV as an accommodation for a disability under the FHA because Congress intended that their acceptance be "voluntary." Appellants' Br. at 2, 31–32. The Landlords' proposed rule belies the long-established and commonsense notion that every reasonable accommodation necessarily transforms a voluntary act into one that is mandatory. *E.g.*, 24 C.F.R. § 100.204(b) (providing example of reasonable accommodation where landlord is required to waive no pets policy for a tenant who is blind and requires seeing eye dog); *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1417 (9th Cir. 1994) (noting the Fair Housing Amendments Act "may require landlords to assume reasonable financial burdens" and finding landlord was required to waive guest fee for tenant with disability whose caretaker resided with her). The Court should decline the Landlords' invitation to adopt a rule categorically barring such reasonable accommodation requests.

To begin, that an act is ordinarily voluntary does not insulate it from becoming a required reasonable accommodation under the FHA when the facts support it. *See U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 397 (2002) ("By definition any special 'accommodation' requires the employer to treat an employee with a disability differently, i.e., preferentially."). The FHA's reasonable accommodation provisions would be superfluous if those provisions only required landlords to undertake actions that they are already required to do. *Cf. id.* (explaining the "reasonable accommodation provision could not accomplish its intended objective" if it could not require employers to make exceptions to their facially-neutral policies). Rather, the FHA's provisions are specifically designed to require landlords to provide accommodations that may not otherwise be mandated under law. *See id.*

Moreover, even though the HCV program is generally voluntary, nothing in the program precludes other laws, like the FHA, from requiring participation in the program. *See, e.g.*, 42 U.S.C. § 1437f; *Comm'n on Human Rights*, 739 A.2d at 245–46 & n.22 ("[N]othing in the text of 42 U.S.C. § 1437f requires participation to be voluntary.").

And while Congress did enumerate limited exceptions to the later-enacted FHA, it did not provide any such exception for the Section 8 program. *See Crossroads*, 2016 WL 3661146, at *10 ("Defendants assert that … the decision not to accept Section 8 vouchers [cannot] violate the FHA. However, no such blanket exemptions from FHA liability exist in the text of the statute or the case law of the Supreme Court or Eighth Circuit."); *see also City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995) (recognizing the "FHA's broad and inclusive compass," and that the limited enumerated exceptions to the FHA must be "read narrowly in order to preserve the primary operation of the policy" (citations omitted)). Rather, federal regulations expressly permit states and municipalities to enact laws that would require landlords to accept HCVs – specifically to prevent discrimination. 24 C.F.R. § 982.53(b) ("Nothing in part 982 [implementing the HCV program] is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder.").

As discussed above, many states and municipalities have in fact adopted such laws prohibiting discrimination on the basis of a tenant's

status as an HCV holder.[10] Notably, landlords have challenged these laws by arguing – as the Landlords do here – that the state and local governments cannot circumvent Congress's intention that the HCV program be voluntary. *E.g.*, *Comm'n on Human Rights*, 739 A.2d at 245–46 & n.22 (landlord challenged Connecticut state law that prohibits source of income discrimination as preempted by Section 8 because it "is voluntary"); *Bourbeau v. Jonathan Woodner Co.*, 549 F. Supp. 2d 78, 87–89 (D.D.C. 2008) (landlord argued "the voluntary nature of" Section 8 preempts D.C. law prohibiting source of income discrimination).

But state and federal courts have upheld state source of income discrimination laws as consistent with the Section 8 program, rejecting landlords' arguments that the congressionally intended voluntariness of the program precludes state governments from effectively mandating participation. *E.g.*, *Comm'n on Human Rights*, 739 A.2d at 245–46 &

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[10] *E.g.*, Cal. Gov't Code §§ 12921, 12927(i), 12955; Conn. Gen. Stat. Ann. § 46a-63; Colo. Rev. Stat. Ann. §§ 24-34-501, 24-34-502; D.C. Code Ann. § 2-1402.21; Mass. Gen. Laws Ann. ch 151B, § 4; N.D. Cent. Code § 14-02.4-02; Okla. St. tit. 25, § 1452; Or. Rev. Stat. § 659A.421; R.I. Gen. Laws §§ 34-37-4, 34-37-3(18); Utah Code Ann. § 57-21-5; Va. Code Ann. §§ 36-96.1.1, 36-96.3.

n.22 ("[N]othing in the federal program prevents a state from mandating participation."); *Bourbeau*, 549 F. Supp. 2d at 87–89 (holding District of Columbia's anti-discrimination law is not preempted by "the voluntary nature of [the HCV] program"). Just as these state laws can validly require landlords to accept HCVs, so too can the FHA.

In fact, the FHA may, and often does, require accommodations that are otherwise prohibited by law or regulation. *See City of Edmonds v. Wash. State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994), a*ff'd sub nom. City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995) (explaining "Congress intended the [FHA] to apply to local land use and health and safety laws [and] regulations," and thus "courts have applied the [FHA]" to require accommodation in the form of exceptions to "neutral zoning rule[s]" (citation omitted)); *Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 102 F.3d 781, 794–96 (6th Cir. 1996) (affirming order requiring City to permit elderly home to operate in single-family-zoned neighborhood as accommodation).

In *Smith & Lee Associates*, for example, the Sixth Circuit held that under the FHA, the city defendant was required to permit an elderly home to operate in a single-family zoned neighborhood, even

though the home violated the zoning law's occupancy limit. 102 F.3d at 794–96. There, the plaintiff elderly home requested an accommodation to exceed the City's zoning law's six occupant limit, because the elderly home required at least nine occupants to be economically viable. *Id.* The Court found such accommodation reasonable and necessary, explaining that the elderly home provided "the only means by which this population can continue to live in residential neighborhoods," *i.e.*, obtain "equal opportunity to enjoy the housing of their choice." *Id.*

Requiring a landlord to participate in an otherwise voluntary program, like the HCV program, as a reasonable accommodation is no different. There is no categorical ban in this Circuit on requiring acceptance of HCVs as a reasonable accommodation to a disability, nor should there be. *See Crossroads*, 2016 WL 3661146, at *10 ("[N]o such blanket exemptions from FHA liability [for refusing to accept HCVs] exist in the text of the statute or the case law of the Supreme Court or Eighth Circuit."); *see also Salute,* 136 F.3d at 311 (Calabresi, J., dissenting) ("question[ing]" majority's conclusion that "Congress, in making Section 8 participation voluntary was also making a failure to participate in Section 8 an *absolute defense* to any discrimination claims

that might be brought under the Fair Housing Amendments Act by Section 8 participants" (emphasis in original)).

Were the Second Circuit to revisit its decision in *Salute* today – and in doing so consider the many state and federal laws that validly require landlords to accept HCVs; the authority upholding those laws; the wealth of data that has been generated in recent decades regarding the actual burdens (or lack thereof) on landlords who participate in the program, *see supra* Section I.B; and the Supreme Court and Courts of Appeals' authority rejecting *Salute*'s reasoning and holding (Appellee's Br. at 29–37) – it seems likely the majority might very well adopt Judge Calabresi's dissent: there is no "absolute defense" to discrimination claims arising from a failure to accept HCVs, whether for disability discrimination or any other form of discrimination, simply because participation in the HCV program was made voluntary by Congress.[11]

[11] Some district courts in the Second Circuit have already implicitly narrowed *Salute*, by holding that landlords are required to make financial accommodations that are "directly related to [tenants'] disabilities." *E.g.*, *CNY Fair Hous., Inc. v. Welltower, Inc.*, No. 5:21-cv-00361, 2022 WL 595695, at *9–11 (N.D.N.Y. Feb. 28, 2022) (citing cases) (denying motion to dismiss FHA claim requesting that landlord waive rental fee imposed as surcharge for first-floor apartment, where

The Court should hold that landlords may be required to accept HCVs as an accommodation, where, as here, the requirements for a reasonable and necessary accommodation under the FHA are satisfied, and the facts of the case show that doing so would not impose an undue burden on the landlord.

CONCLUSION

For the reasons above, in addition to those stated in Ms. Klossner's brief, the Court should affirm the District Court's decision ordering the Landlords to accept Ms. Klossner's HCV as a reasonable accommodation.

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tenants needed to be on first floor or near the elevator to accommodate their disabilities).

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Respectfully submitted,

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CERTIFICATE OF SERVICE AND CM/ECF FILING

I hereby certify that I caused the foregoing brief to be served on all parties through their counsel of record via electronic mail generated by the Court's electronic filing system with a Notice of Docket Activity pursuant to Local Appellate Rule 25A(e). I also certify that an electronic copy was uploaded to the Court's electronic filing system.

Dated: March 7, 2022 /s/ Heather F. Canner

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